STATE OF MICHIGAN

COURT OF APPEALS

TRACIE JENKINS COUTURE, Personal Representative for the Estate of THOMAS RAYMOND COUTURE,

Plaintiff-Appellant,

v

FARM BUREAU GENERAL INSURANCE COMPANY,

Defendant/Cross-Plaintiff-Appellee,

and

RODNEY LEE DANIELS and TANYA LYNN DANIELS,

Defendants/Cross-Defendants.

UNPUBLISHED
August 6, 2009

No. 283404
Arenac Circuit Court
LC No. 07-010102-CK

Before: Zahra, P.J., and Whitbeck and M. J. Kelly, JJ.

PER CURIAM.

In this dispute over the terms of an insurance contract, plaintiff Tracie Couture, who is the personal representative of the Estate of Thomas Couture, appeals by right the trial court's decision to deny her motion for summary disposition and the trial court's judgment after a bench trial in favor of defendant Farm Bureau General Insurance Company. On appeal, we must determine whether the trial court could properly reform an unambiguous insurance contract. And, if the trial court could properly reform the contract, we must then determine whether the trial court erred when it found that Farm Bureau had met its burden of proof and reformed the contract on that basis. We conclude that the trial court did not err when it determined that it had the equitable power to reform the contract at issue. However, we conclude that Farm Bureau failed to present evidence sufficient to establish its right to reformation. For that reason, we reverse the trial court's judgment in favor of Farm Bureau and remand for entry of declaratory relief in Tracie Couture's favor.

I. Facts and Procedural History

In January 2006, Rodney Daniels purchased automobile no-fault insurance from Brian Lansky, who was an agent for Farm Bureau. Rodney testified at trial that he went to Lansky because he wanted to lower his monthly payments and "Brian's got pretty much the cheapest rates around." The initial application included primary medical coverage and had bodily injury coverage in the amount of $20,000 per person and $40,000 per occurrence.

After Rodney obtained this insurance, he went to Lansky several times in order to adjust the vehicles covered under the policy. Rodney explained that he made the adjustments in order to lower his monthly payments.

In early July 2006, Rodney again went to Lansky's office and asked about lowering his monthly payment. Rodney stated that he "authorized" Lansky to do whatever it takes to lower his premium. After this meeting with Lansky, Rodney received an amended policy. The policy, which was issued July 27, 2006, included two significant changes: Rodney's medical coverage was now excess rather than primary and his coverage was increased from $20,000 per person and $40,000 per occurrence to $300,000 per person and per occurrence. Rodney testified that he did not really examine the amendment; he was just happy that it reduced his overall payments from around $125 per month to less than $80 per month.

Rodney stated that he again requested a change to the vehicles covered under his policy. Because he changed the vehicle coverage to include a vehicle with air bags, his monthly payments were again reduced. Rodney testified that this amended policy was issued August 2, 2006. The policy retained the excess medical coverage and the $300,000 bodily injury coverage.

On August 12, 2006, Rodney's wife, Tanya Daniels, was involved in an accident with Thomas Couture, who was riding a motorcycle. Thomas Couture died from the injuries sustained in the accident.

After the accident Tracie Couture obtained a statement from Farm Bureau indicating that the Daniels had $300,000 in coverage. However, Lansky testified that sometime after the accident, someone from Farm Bureau's home office contacted him about an apparent "keying error" with the Daniels' policy. Lansky stated that the policy was erroneously amended to increase the bodily injury coverage from $20,000 to $300,000 and to change the medical coverage from primary to excess. Lansky testified that his office did not originate the change. Based on its belief that the coverage level was erroneous, Farm Bureau retroactively changed the limits from $300,000 to $20,000 and changed the medical coverage from excess to primary. Farm Bureau then notified Tracie Couture that the coverage was not $300,000 as previously stated, but was $20,000.

In May 2007, Tracie Couture sued Farm Bureau for declaratory relief; specifically, she asked the trial court to declare that the coverage provided under the insurance contract between Farm Bureau and the Daniels provided $300,000 in bodily injury coverage. Farm Bureau responded by denying that the applicable coverage was $300,000. Instead, Farm Bureau filed a cross-claim against Rodney and Tanya Daniels in which Farm Bureau asserted that the amendment that increased the coverage from $20,000 to $300,000 was the result of a mutual mistake. Farm Bureau further asked the trial court to reform the contract to reflect the parties'

intent to have $20,000 in coverage and to declare that the actual coverage under the policy was $20,000.

The case eventually proceeded to a bench trial. After hearing the testimony and examining the evidence, the trial court commented on the evidence. The trial court first acknowledged that Rodney's goal throughout was to get the lowest possible premium, but noted that there was no evidence that this goal was communicated to Farm Bureau. The trial court also found it noteworthy that Rodney testified that he thought he only had $20,000 in coverage. Further, the trial court indicated that there was no evidence that the change in coverage to $300,000 was the result of a request by Rodney or Lansky. From this, the trial court concluded that the change in coverage was the result of mistake. Accordingly, the trial court reformed the contract and, on January 24, 2008, entered an order declaring that the applicable bodily injury coverage was $20,000.

This appeal followed.

II. Standing to Contest Reformation of Contract

As a preliminary matter, we shall address Farm Bureau's contention that Tracie Couture lacks standing to contest the reformation of the insurance contract at issue. This Court reviews de novo challenges to standing as a question of law. *Manuel v Gill*, 481 Mich 637, 642; 753 NW2d 48 (2008).

Tracie Couture initiated the present dispute when she sued Farm Bureau for declaratory relief regarding Farm Bureau's insurance contract with Rodney and Tanya Daniels. Generally, in order to have standing to sue, the plaintiff must have suffered an actual or imminent invasion of a legally protected interest, which can be redressed by the court. *Lee v Macomb Co Bd of Comm'rs*, 464 Mich 726, 739; 629 NW2d 900 (2001), quoting *Lujan v Defenders of Wildlife*, 504 US 555, 560-561; 112 S Ct 2130; 119 L Ed 2d 351 (1992). In this case, it is evident that Tracie Couture meets the traditional standing requirements. She represents the estate of a decedent who allegedly died as a result of Tanya Daniels' actions and the circumstances could lead to the imposition liability in the form of money damages that Farm Bureau would be obligated to pay. Further, because Rodney and Tanya Daniels are apparently uncollectible, any reduction in Farm Bureau's obligations under its contract could adversely affect Tracie Couture's ability to obtain compensation. However, notwithstanding the generally standing requirements, it is well settled that third parties to a contract generally do not have standing to enforce the terms of the contract even if they are incidentally benefited by it. *Schmalfeldt v North Pointe Ins Co*, 469 Mich 422, 427; 670 NW2d 651 (2003). For a third party to be able to enforce the terms of a contract, the third party must be an intended beneficiary—that is, the promissor must have promised to do something to or for, or to refrain from doing something to or for, the third party. *Id.* at 428. A person who is incidentally benefited in a manner similar to the public as a whole is not an intended beneficiary. *Brunsell v City of Zeeland*, 467 Mich 293, 298; 651 NW2d 388 (2002). Nevertheless, under the unique procedural posture of this case, Tracie Couture has standing to challenge Farm Bureau's attempt to reform the contract after the accident in which her decedent died.

In answer to Tracie Couture's complaint, Farm Bureau alleged a cross claim against Rodney and Tanya Daniels in which it claimed that it was entitled to have the insurance contract between it and Rodney reformed to reflect $20,000 in coverage. It further alleged that, because it was entitled to have the contract reformed in this way, it was also entitled to a declaration that the coverage was $20,000. That is, although it did not bring a cross-complaint for declaratory relief, it asserted the right to such a declaration and framed its right to reformation as a defense to Tracie Couture's suit.

Farm Bureau itself clearly had standing to sue to reform the contract at issue. *Biondo v Ridgemont Ins Agency, Inc*, 104 Mich App 209, 212; 304 NW2d 534 (1981). When determining whether to reform a contract, a court sitting in equity may decline to grant the requested relief based on the intervening rights of third parties. *Scott v Grow*, 301 Mich 226, 239; 3 NW2d 254 (1942). Thus, although a third party might not have standing to sue for reformation, a third party whose rights will be adversely affected by a trial court's decision to reform a contract is a proper party. Similarly, our Supreme Court has noted that, in an action for declaratory relief between an insurer and its insured, an injured third party whose rights will be affected by the declaratory ruling is a proper party to the action. *Allstate Ins Co v Hayes*, 442 Mich 56, 67; 499 NW2d 743 (1993). For these reasons, once Farm Bureau brought Rodney and Tanya Daniels before the trial court and asserted both its right to have the contract reformed and the right to a declaration that the coverage was actually $20,000, Tracie Couture had sufficient standing to "warrant judicial protection." *Id.* at 68. Therefore, we reject Farm Bureau's challenge to Tracie Couture's standing to contest the reformation of the contract between Farm Bureau and the Daniels.

III. Reformation and Unambiguous Contracts

On appeal, Tracie Couture argues that the trial court erred when it failed to grant summary disposition in her favor and declare that the policy at issue had $300,000 in coverage. Specifically, Tracie Couture contends that the contract was clear and unambiguous and provided for $300,000 in coverage, and, for that reason, the trial court had to enforce it as written. She also argues that, as a matter of public policy, the trial court could not reform the insurance contract after the accident involved in this case. For these reasons, she argues that the trial court had to grant summary disposition in her favor. Whether a trial court may properly reform an unambiguous contract and whether it is against public policy to reform a contract after an accident giving rise to liability under the contract are questions of law that this Court reviews de novo. See *Cardinal Mooney High School v Michigan High School Athletic Ass'n*, 437 Mich 75, 80; 467 NW2d 21 (1991). Likewise, this Court reviews de novo a trial court's decision on a motion for summary disposition. *AutoAlliance Intern'l v Dept of Treasury*, 282 Mich App 492, 498; ___ NW2d ___ (2009)

This Court has recently reiterated that, "Michigan courts sitting in equity have long had the power to reform an instrument that does not express the true intent of the parties as a result of fraud, mistake, accident, or surprise." *Johnson Family Ltd Partnership v White Pine Wireless, LLC*, 281 Mich App 364, 372; 761 NW2d 353 (2008). This is true even though the instrument is on its face unambiguous. *Id.* at 373. And, although the Court in *Johnson Family Ltd Partnership* addressed the power to reform an unambiguous deed, the same is true for contracts. See *Casey v Auto-Owners Ins Co*, 273 Mich App 388, 398; 729 NW2d 277 (2006) (noting that, generally, a court of equity has the power to reform contracts based on mutual mistake). Hence,

the fact that the contract at issue unambiguously provided for $300,000 in bodily injury coverage did not preclude the trial court from reforming the contract based on mistake.

Further, there is no explicit public policy prohibiting the reformation of an insurance contract based on mistake after a loss that gives rise to liability under the contract. See *Lake States Ins Co v Wilson*, 231 Mich App 327, 334; 586 NW2d 113 (1998) (stating that an insurer could reform an automobile insurance contract after an innocent third party's injury as long as the reformed contract still met the mandatory minimum coverage under the no-fault act). Indeed, Michigan courts have permitted reformation of insurance contracts in the past even though the reformation occurred after a loss. See, e.g., *Whitney v Nat'l Fire Ins Co*, 296 Mich 38; 295 NW 551 (1941); *Progressive Mutual Ins Co v Taylor*, 35 Mich App 633, 637-638; 193 NW2d 54 (1972) (permitting reformation of an insurance contract to exclude coverage even after an accident resulting in the death of a third party). In such cases, the court may consider whether the request for reformation should be denied on the basis of the adverse effect of the reformation on the rights of innocent third parties, but the mere fact that a third party will be adversely effected does not, by itself, preclude reformation. See, e.g., *Johnson Family Ltd Partnership*, 281 Mich App at 393-394 (concluding that, although a third party's leasehold interest would be adversely affected by the reforming of a deed to include restrictions, the equities were not sufficient to bar reformation).

The trial court did not err when it declined to grant summary disposition in Tracie Couture's favor on the basis that it had to enforce the unambiguous contract terms as written and could not, as a matter of public policy, reform an insurance contract after a loss that gave rise to liability under the insurance contract.

IV. Parol Evidence

Tracie Couture next argues that the trial court erred when it permitted the admission of parol evidence when considering whether Farm Bureau established grounds for reforming the contract at issue. Whether parol evidence is admissible to prove grounds for reforming a contract is a question of law that this Court reviews de novo. *In re Kramek Estate*, 268 Mich App 565, 573; 710 NW2d 753 (2005).

Generally, parol evidence may not be introduced to contradict or vary the terms of an otherwise complete agreement. *Hamade v Sunoco, Inc (R&M)*, 271 Mich App 145, 166-167; 721 NW2d 233 (2006). However, it is well settled that parties may submit parol evidence to prove that an agreement was the product of fraud or mistake. *Id.* at 167 (noting that the parties may submit extrinsic evidence to prove fraud, illegality, or mistake); *Goldberg v Cities Service Oil Co*, 275 Mich 199, 209; 266 NW 321 (1936) (stating that parol evidence may be admitted to prove fraud or mistake because evidence of fraud or mistake is seldom found in the instrument itself). Consequently, the trial court did not err when it permitted the submission of evidence concerning the prior conduct and negotiations between Daniels and Farm Bureau.

V. Clear and Convincing Evidence

Tracie Couture next argues that the trial court erred when it found that Farm Bureau had established its right to reform the contract to reflect $20,000 in coverage. Specifically, she argues that Farm Bureau failed to present sufficient evidence to warrant the requested

reformation. This Court reviews de novo the relief granted by a trial court in an equitable action such as an action to reform a contract. *Blackhawk Development Corp v Village of Dexter*, 473 Mich 33, 40; 700 NW2d 364 (2005). However, this Court will not reverse a trial court's grant of equitable relief unless the trial court's findings were clearly erroneous or we conclude that we would have reached a different result had we occupied the trial court's position. *Scmude Oil Co v Omar Operating* Co, 184 Mich App 574, 582; 458 NW2d 659 (1990).

In the present case, Farm Bureau alleged that it was entitled to have the contract in force at the time of the accident reformed to provide for $20,000 in bodily injury coverage rather than the $300,000 in coverage actually stated. Farm Bureau alleged that it was entitled to reformation on the basis of mistake. A court sitting in equity may reform an instrument that does not express the true intent of the parties as a result of mistake. *Johnson Family Ltd Partnership*, 281 Mich App at 371-372. The mistake may be either unilateral or mutual. *Id.* at 379-381. However, in order to establish the right to have a contract reformed based on a unilateral mistake, the party requesting the relief must prove that the mistake was the result of fraud or that the other party knew that the writing did not accurately express the intention of the party requesting relief at the time of execution and concealed that knowledge. *Id.* at 380; *Barryton State Savings Bank v Durkee*, 325 Mich 138, 140-142; 37 NW2d 892 (1949) (noting that a court sitting in equity may reform a contract based on a unilateral mistake where one party has made a mistake and the other party knows it and conceals the mistake). In this case, there was no evidence that Rodney Daniels fraudulently induced Farm Bureau to change the coverage limit from $20,000 to $300,000 or that he knew that the amendment did not accurately reflect Farm Bureau's intent and concealed that knowledge from Farm Bureau. Thus, the trial court could only grant the requested relief based on a mutual mistake.

In order to establish grounds for relief based on mutual mistake, "the party seeking reformation must prove the mutual mistake by 'clear and satisfactory' evidence, 'so as to establish the fact beyond cavil.'" *Johnson Family Ltd Partnership*, 281 Mich App at 379, quoting *Crane v Smith*, 243 Mich 447, 450; 220 NW2d 750 (1928). Indeed, the "proofs of mistake must be of substantial and material fact, shared by and common to both parties, and, above all, established beyond cavil by clear and satisfactory evidence." *Goldman v CenturyIns Co*, 354 Mich 528, 533; 93 NW2d 240 (1958). Hence, a mere preponderance of the evidence is not sufficient to establish a mutual mistake; rather, the party seeking reformation must present clear and convincing proof of mistake. See *Emery v Clark*, 303 Mich 461, 470-473; 6 NW2d 746 (1942) (examining the standard of proof applicable to cases involving the reformation of a contract based on mutual mistake and concluding that the proof must be clear and convincing). Further, we are mindful that courts must proceed with the utmost caution when exercising their power to reform a contract. *Theophelis v Lansing Hosp*, 430 Mich 473, 492; 424 NW2d 478 (1988) (Griffin, J.).

In this case, the trial court determined that Farm Bureau had proved a mutual mistake. At trial, Lansky testified that he was Rodney Daniels' insurance agent and that he had processed Rodney's original application for insurance. Lansky stated that Rodney was interested in getting the "best price" and that he, Lansky, had filled out the original application for $20,000 in bodily injury coverage. Lansky also testified that the change in coverage from $20,000 to $300,000 did not originate with his office. He explained that there would have been a paper record if the change originated with his office and there was no such record. Lansky further testified that

someone at Farm Bureau told him that it must have been a "keying error at [Farm Bureau's] home office."

This testimony permits an inference that Farm Bureau erroneously amended the coverage from $20,000 to $300,000. However, the fact that Farm Bureau erroneously issued an amendment to the policy does not establish the existence of a mutual mistake; if Rodney Daniels intended to accept the amended policy with its new coverage limits, any mistake would be unilateral—the mistake over coverage would be on Farm Bureau's part alone. Hence, in order to establish a mutual mistake, Farm Bureau had also to present evidence that Rodney did not intend the change in coverage.

At trial, Rodney Daniels testified that he never specifically requested a change in his coverage from $20,000 to $300,000. He also testified that he thought that his policy gave him only $20,000 in coverage. On the surface, this evidence appears to support an inference that the increase in coverage was also a mistake as to Rodney. However, although Rodney testified that he did not *specifically* request the change in coverage, he did testify that he went to Lansky's office shortly before the amendment at issue and told Lansky that he could not afford his current premiums. Rodney stated that, at this meeting, he "authorized Brian to get me a lower monthly payment." Indeed, Rodney repeatedly emphasized that his goal was to obtain legal coverage—to avoid "a bracelet ride"—and to do so at the lowest possible price. He also indicated that he did not care what his agent did to get the premium down. Rodney testified that, after this meeting with Lansky, he received the amendment with the reduced premium and was happy: "And I don't know how it happened or why it happened or what, but seventy-four eighty is a monthly payment that I could handle." He further testified that he assumed Lansky had done whatever he needed to do to get the lower monthly payment: "I wanted less of a payment, and Mr. Lansky got me less of a payment. How it happened, I don't know, and I really didn't care."

This testimony establishes that Rodney had no intention with regard to his level of coverage at all—his only intention was to reduce his premium. Indeed, based on his testimony, it is evident that Rodney was willing to agree to virtually any change to his policy as long as the change gave him "legal" coverage and resulted in a lower overall premium. Further, Rodney testified that he did not understand the specifics of his coverage and assumed that the changes were initiated by Lansky—that is, that Lansky had done whatever it took to lower his premium. And, although Farm Bureau retroactively altered his premium after the accident at issue, it is undisputed that Rodney paid the premium associated with the $300,000 in coverage. Based on this testimony and evidence, we conclude that the trial court clearly erred when it found that there was clear and convincing evidence that the amendment to the coverage was the product of a mutual mistake. *Scmude Oil Co*, 184 Mich App at 582. Rodney was not mistaken about the coverage limit—he simply did not care one way or another. And, when presented with the amended policy—whatever its origins—Rodney accepted it *as written*. Consequently, any mistake was unilateral; and, because there is no evidence of fraud or inequitable conduct on Rodney's part, such a mistake does not warrant reformation of the insurance contract.

Farm Bureau failed to establish grounds for reforming the contract on the basis of mistake. Therefore, the contract terms must be enforced as written. For that reason, we reverse the trial court's judgment in favor of Farm Bureau and remand for entry of the declaratory relief requested by Tracie Couture.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction. As a prevailing party, Tracie Couture may tax costs. See MCR 7.219(A).

/s/ William C. Whitbeck
/s/ Michael J. Kelly